IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 229 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

HAYAT DAUD DAFER

Appearance:

MR BY MANKAD, APP for Petitioner No. 1

RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 25/09/2001

ORAL JUDGEMENT

1. Heard learned APP Mr. B.Y. Mankad for the State at length.

2. Investigating Officer is present and papers were produced.

3. This Revision Application is preferred against

the order of learned Judicial Magistrate, First Class, Petlad, passed on 9th April, 1999, rejecting the application of the State for committing the case to the Court of Sessions against present respondent - Hayat Daud Dafer - accused in Criminal Case No. 1420 of 1996 arising out of Crime Register Petlad (Rural) No. I-70/1994. There were more than one accused in said Crime Register and Criminal Case No. 2383 of 1995 was conducted and trial against accused Ramjan Dafer resulted in acquittal wherein two other accused including present respondent was shown absconded and hence supplementary charge sheet on arrest of the present respondent was submitted, which was numbered as Crime Register No.1420 of 1996 for the offences punishable under Section 394 read with Section 34 of the Indian Penal Code. The respondent is in jail and is served and has not appeared in this matter. The Application was filed by the State on the ground that the offence of 397 and 398 of the Indian Penal Code is disclosed and case is required to be committed to the Court of Sessions.

4. Learned Magistrate rejected the application on two grounds. Firstly, there was no evidence that the present respondent can be charged under Section 397 of the Indian Penal Code and be committed to the Sessions Court for the trial, and secondly, the trial against the other accused i.e. Criminal Case No.2383 of 1995 resulted in acquittal.

5. After hearing learned APP Mr.Mankad and perusing the papers, suffice it to say that at present the charge under Section 397 of the Indian Penal Code cannot be framed against the respondent and no interference is required in the order passed by the learned Magistrate which is impugned in this Revision. Detailed discussion is not required because the same may prejudice the trial. However, the State will be at liberty to file the appropriate application for committing the case to the Court of Sessions if facts of graver offence is disclosed by the evidence during trial.

6. With these observations, this Revision Application fails and stands dismissed. Rule is discharged.

7. The letter of the learned District & Sessions Judge, Kheda at Nadiad along with the explanation of the 2nd Jt. Civil Judge (JD) & JMFC, Petlad is taken on record and no further explanation is required.

(J.R. Vora, J.)

p.n.nair